

ASSEMBLY BILL

No. 1131

Introduced by Assembly Member Jackson

February 21, 2003

An act to amend Section 368 of the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

AB 1131, as introduced, Jackson. Crime.

Existing law provides that it is a crime, punishable, based upon the value of the property taken, by imprisonment in a county jail, a fine not exceeding \$1,000, or both that imprisonment and fine, or by imprisonment in a county jail for a period not exceeding one year or imprisonment in the state prison for 2, 3, or 4 years, for a person who is the caretaker of an elder or dependent adult or for a person who is not a caretaker who knew or should have known that their victim was an elder or dependent adult, to commit theft or embezzlement with respect to the property of an elder or dependent adult.

This bill would expand these provisions to include forgery, fraud, or identity theft committed against an elder or dependent adult. This bill would also provide that every person who, having been convicted of misdemeanor elder financial abuse under these provisions and having served a term of imprisonment therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, is subsequently convicted of financial elder abuse, is punishable by imprisonment in a county jail or in the state prison, as specified. By expanding punishment for the above criminal offenses, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 368 of the Penal Code is amended to
2 read:

3 368. (a) The Legislature finds and declares that crimes
4 against elders and dependent adults are deserving of special
5 consideration and protection, not unlike the special protections
6 provided for minor children, because elders and dependent adults
7 may be confused, on various medications, mentally or physically
8 impaired, or incompetent, and therefore less able to protect
9 themselves, to understand or report criminal conduct, or to testify
10 in court proceedings on their own behalf.

11 (b) (1) Any person who, under circumstances or conditions
12 likely to produce great bodily harm or death, willfully causes or
13 permits any elder or dependent adult, with knowledge that he or
14 she is an elder or a dependent adult, to suffer, or inflicts thereon
15 unjustifiable physical pain or mental suffering, or having the care
16 or custody of any elder or dependent adult, willfully causes or
17 permits the person or health of the elder or dependent adult to be
18 injured, or willfully causes or permits the elder or dependent adult
19 to be placed in a situation in which his or her person or health is
20 endangered, is punishable by imprisonment in a county jail not
21 exceeding one year, or by a fine not to exceed six thousand dollars
22 (\$6,000), or by both that fine and imprisonment, or by
23 imprisonment in the state prison for two, three, or four years.

24 (2) If in the commission of an offense described in paragraph
25 (1), the victim suffers great bodily injury, as defined in Section
26 12022.7, the defendant shall receive an additional term in the state
27 prison as follows:

28 (A) Three years if the victim is under 70 years of age.

29 (B) Five years if the victim is 70 years of age or older.



(3) If in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison as follows:

(A) Five years if the victim is under 70 years of age.

(B) Seven years if the victim is 70 years of age or older.

(c) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor. A second or subsequent violation of this subdivision is punishable by a fine not to exceed two thousand dollars (\$2,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(d) Any person who is not a caretaker who violates any provision of law proscribing theft or embezzlement, *or forgery, fraud, or identity theft, under Section 530.5*, with respect to the property *or personal identifying information* of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years, when the money, labor, *goods, services*, or real or personal property taken is of a value exceeding four hundred dollars (\$400); and by a fine not exceeding one thousand dollars (\$1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, *goods, services*, or real or personal property taken is of a value not exceeding four hundred dollars (\$400).

(e) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft or embezzlement, *or forgery, fraud, or identity theft, under Section 530.5*, with respect to the property *or personal identifying information* of that elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four

1 years when the money, labor, *goods, services*, or real or personal
2 property taken is of a value exceeding four hundred dollars (\$400),
3 and by a fine not exceeding one thousand dollars (\$1,000), by
4 imprisonment in a county jail not exceeding one year, or by both
5 that fine and imprisonment, when the money, labor, *goods,*
6 *services*, or real or personal property taken is of a value not
7 exceeding four hundred dollars (\$400).

8 (f) *Every person who, having been convicted of misdemeanor*
9 *elder financial abuse under subdivision (d) or (e) and having*
10 *served a term of imprisonment therefor in any penal institution or*
11 *having been imprisoned therein as a condition of probation for that*
12 *offense, is subsequently convicted of financial elder abuse under*
13 *subdivision (d) or (e), is punishable by imprisonment in a county*
14 *jail for a period not exceeding one year or in the state prison for*
15 *two, three, or four years.*

16 (g) Any person who commits the false imprisonment of an
17 elder or a dependent adult by the use of violence, menace, fraud,
18 or deceit is punishable by imprisonment in the state prison for two,
19 three, or four years.

20 ~~(g)~~

21 (h) As used in this section, “elder” means any person who is
22 65 years of age or older.

23 ~~(h)~~

24 (i) As used in this section, “dependent adult” means any
25 person who is between the ages of 18 and 64, who has physical or
26 mental limitations which restrict his or her ability to carry out
27 normal activities or to protect his or her rights, including, but not
28 limited to, persons who have physical or developmental
29 disabilities or whose physical or mental abilities have diminished
30 because of age. “Dependent adult” includes any person between
31 the ages of 18 and 64 who is admitted as an inpatient to a 24-hour
32 health facility, as defined in Sections 1250, 1250.2, and 1250.3 of
33 the Health and Safety Code.

34 ~~(i)~~

35 (j) As used in this section, “caretaker” means any person who
36 has the care, custody, or control of, or who stands in a position of
37 trust with, an elder or a dependent adult.

38 ~~(j)~~

39 (k) Nothing in this section shall preclude prosecution under
40 both this section and Section 187 or 12022.7 or any other provision

1 of law. However, a person shall not receive an additional term of
2 imprisonment under both paragraphs (2) and (3) of subdivision (b)
3 for any single offense, nor shall a person receive an additional term
4 of imprisonment under both Section 12022.7 and paragraph (2) or
5 (3) of subdivision (b) for any single offense.

6 SEC. 2. No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district will be incurred because this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the penalty
11 for a crime or infraction, within the meaning of Section 17556 of
12 the Government Code, or changes the definition of a crime within
13 the meaning of Section 6 of Article XIII B of the California
14 Constitution.

